

REMARKS/ARGUMENTS

By the present amendment, Applicant has amended Claims 1, 5, 6, 8, 9, 13, 14 and 17. Claims 2-4, 7, 12, 15-20 have been cancelled. Claims 1, 5, 6, 8-11, 13, 14 and 17 remain pending in the present application. Claim 1 is the only independent claim.

Applicant's representative was unable to contact the Examiner to arrange a personal interview before expiration of the current period for response. Applicant herein requests a personal interview in accordance with MPEP § 713.01 to discuss the merits of the present application and to consider the effects of the present amendment thereon. Applicant's representative will again attempt to contact the Examiner in the near future to arrange a convenient date for the interview.

Initially, Applicant points out that the US Patent to Hagerman et al. (4,685,671), applied in rejection of Claim 17, has not been made of record by the Examiner.

The Examiner has objected to the specification as containing an improper reference numeral. Applicant has amended the appropriate paragraph of the specification to provide the correct reference numeral, thus obviating the Examiner's objection.

In the recent Office Action Claims 1-4, 6, 7, 9, 10, 14-16 and 18-20 have been rejected by the Examiner under 35 U.S.C. § 102(b) as being anticipated by Van Ballegooie (5,336,151).

Claims 5 and 8 have been rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Van Ballegooie (U.S. Patent No. 5,336,151) in view of Norstrom et al. (U.S. Patent No. 6,540,705). Claim 11 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Van Ballegooie in view of Suarez et al. (U.S. Patent No. 4,815,731). Claims 12 and 13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Van Ballegooie in view of Lavarone (U.S. Patent No. 5,643,159), and further in view of Atrizadeh (U.S. 2005/0043154). Claim 17 has been rejected under 35 U.S.C. § 103(a) as being unpatentable over Van Ballegooie in view of Hagerman et al. (U.S. Patent No. 4,685,671).

Applicant has amended independent Claim 1 by including subject matter previously recited in original dependent Claims and by further defining Applicant's invention over the prior art. Applicant will advance arguments hereinbelow to illustrate the manner in which the presently claimed invention is patentably distinguishable from the applied and cited prior art. Reconsideration of the present application is respectfully requested.

The patent to Van Ballegooie discloses a body exercise device, which includes a waist belt having a plurality of snap rings pivotally attached to the belt at spaced intervals. The patent to Van Ballegooie further discloses foot pieces for each foot of the user, which also include snap rings. Removable hand pieces are also provided, each including a swivel snap ring. A plurality of elongated elastic members are provided, having snap hooks at the ends for attachment to the snap rings of the waist belt, the snap rings of the foot pieces and the snap rings of the hand pieces.

Claims 1-4, 6, 7, 9, 10, 14-16 and 18-20 have been under 35 U.S.C. § 102(b) as being anticipated by Van Ballegooie. However, to anticipate a claim, a prior art reference must disclose every limitation of the claimed invention, either explicitly or inherently. In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). The patent to Van Ballegooie does not disclose each and every limitation of Applicant's amended independent Claim 1. In this regard, Van Ballegooie does not show, at least, the T-shaped flexible body, the first elastic strap with permanently affixed handles and the adjusting pieces on the first and second elastic straps for adjusting the tension thereof. Therefore, since each and every feature of Applicant's claimed invention is not shown in the patent to Van Ballegooie, the rejection of the Claims under 35 U.S.C. § 102(b) is improper and should be withdrawn.

The patent to Iavarone discloses a therapeutic exercise device having an adjustable ankle harness, multiple elastic straps, a spring-loaded adjustment piece and handles. The patent to Atrizadeh discloses an exercise and muscle toner device, which includes a plurality of adjustment buckles or pieces for adjusting the tension on an elastic strap. And, the patent to Hagerman et al. discloses a an exercise device having handles 12 that are attached to an elastic tube 11 by an adjustment means 17 for moving the handle 12 to a selected position. The handles are hardly “permanently attached” as the Examiner alleges. The Examiner believes that it would have been obvious to modify Van Ballegooie by providing a plurality of adjusting pieces on the elastic straps, as taught by Iavarone and Atrizadeh. The Examiner further believes that it would have been obvious to make the handles of Van Ballegooie permanently attached, according to the teachings of Hagerman et al.

Applicant does not agree with the Examiner’s conclusions. In this regard, as noted above, Applicant’s amended independent Claim 1 recites certain features which are not disclosed in, nor made obvious by, the applied prior art references. Secondly, the handles of Hagerman et al. are not permanently attached to the elastic strap, and thus do not provide a teaching of such permanent attachment. And finally, amended Claim 1 recites that the exercise kit of Applicant’s invention include both permanently attached handles on the first elastic strap, and a plurality of removably securable attachable handles for attaching to the second elastic strap. MPEP § 2143 states: “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation,

either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. **Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.** *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added)." Obviousness is tested by "what the combined teachings of the references would have suggested to those of ordinary skill in the art." *In re Keller*, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). There is nothing in the teachings of the relied upon prior art references which would have suggested the desirability, and thus the obviousness of the Examiner's modifications of the body exercise device of Van Ballegooie. Indeed, some of the now claimed limitations are not even shown in any of the references. It is only by impermissible hindsight and reliance on Applicant's own disclosure that the Examiner would have been led to reconstruct the body exercise device of Van Ballegooie so as to derive Applicant's claimed exercise kit from the applied teachings. It is therefore Applicant's conclusion that the combined teachings of Van

Ballegoie, Iavarone, Atrizadeh and Hagerman et al. fail to establish a *prima facie* case of obviousness.

The Norstrem et al. patent and the Suarez et al. patent relied upon by the Examiner in rejecting dependent claims, and the remaining patents made of record in the application but not applied against any of the claims have also been carefully reviewed, however, Applicant finds nothing therein which would overcome or supply that which is lacking in the basic combination of the other applied prior art noted above.

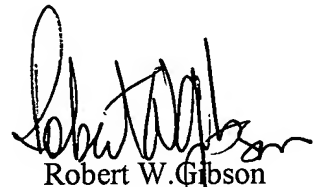
The claims in this application have been revised to more particularly define Applicant's unique construction in view of the prior art of record. Reconsideration of the claims in light of the amendments and for the above-noted reasons is respectfully requested.

Application No.: 10/827,377
Art Unit: 37642

Attorney Docket No. 24789.00
Confirmation No. 3809

For the foregoing reasons, Applicant respectfully submits that the present application is in condition for allowance. If such is not the case, the Examiner is requested to kindly contact the undersigned in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert W. Gibson', with a stylized flourish at the end.

Robert W. Gibson
Litman Law Offices, Ltd.
Registration No. 57,145
(703) 486-1000

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